

HS-18.12, "Informed Consent"

## SCDC POLICY/PROCEDURE

Change 1: #1.3

NUMBER: HS-18.12

TITLE: INFORMED CONSENT

ISSUE DATE: June 1, 2007

RESPONSIBLE AUTHORITY: DIRECTOR OF HEALTH SERVICES

OPERATIONS MANUAL: HEALTH SERVICES

SUPERSEDES: HS-18.12 (September 1, 2003)

RELEVANT SCDC FORMS/SUPPLIES: M-7A&B, M-19B, M-43, M-53, M-65, M-107, M-108, M-111

ACA/CAC STANDARDS: 4-ACRS-4C-19, 4-ACRS-4C-23, (3-4372, 3-4376)

STATE/FEDERAL STATUTES: S.C. Code of Laws, 1976, as amended, Sections 20-7-280 and 44-22-10

SCDC MEDICAL DIRECTIVES:

PURPOSE: To provide guidelines for informed consent.

POLICY STATEMENT: The Agency will ensure that the informed consent will be managed by the SCDC in accordance with applicable Agency policies/procedures and state and federal statutes.

### 1.INFORMED CONSENT:

1.1 The informed consent of the patient will be required for all major medical examinations, treatments, and procedures governed by informed consent standards in the community. This will not include procedures which are performed under emergency circumstances. (For issues regarding the withholding or withdrawal of life support, refer to SCDC Medical Directive 200-3, "Withholding or Withdrawing Life Support.")(4-ACRS-4C-19, 4-ACRS-4C-23, 3-4372, 3-4376)

1.2 For the consent to be valid, the person carrying out the diagnostic or therapeutic procedure must explain the procedure and obtain the consent; and the inmate must be legally and mentally capable of giving consent. The following will apply:

1.2.1 Mental capacity: Two (2) physicians who have examined the inmate must certify that it is their medical opinion that the inmate lacks the mental capacity to give consent. (See South Carolina Code of Laws Section 44-22-10.) If the care giver questions the mental capacity of the inmate to give consent, two (2) physicians must examine the inmate to evaluate mental capacity. The SCDC Office of General Counsel may be contacted in individual cases as needed.

1.2.2 If the inmate is physically unable to give consent, the inmate's family will be contacted for consent. If the inmate has no family or no family can be reached to give consent, the hospital will refer to the Adult Health Care Consent Act for the order of priority of persons who may make health care decisions for the inmate.

1.2.3 Minors: Pursuant to Section 20-7-280, South Carolina Code of Laws, as amended, a minor 16 years old or over may consent to a health service other than an operation. Therefore, the legal guardian of an inmate who is a minor must give informed consent for an operation. If the minor is married or determined judicially to be emancipated, s/he may consent to major medical treatment. (4-ACRS-4C-19,3-4372)

1.2.4 The inmate must make his/her decision free of influence, coercion, or threats of reprisal. The consent must be given for a specific test or treatment. There must be adequate explanation of information in a language that is understandable to the inmate. The inmate must be given reasonable opportunity to ask questions in order to process the information disclosed by the care giver.

1.3 If the inmate agrees to the procedure/treatment, s/he will be asked to sign a consent form. If the inmate refuses the recommended treatment, s/he will be asked to sign SCDC Supply M-53, "Refusal of Medical Advice Form." See SCDC Policy/Procedure HS-18.19, "Refusal of Medical Care," for additional information. Various consent forms used by SCDC Health Services include: (4-ACRS-4C-19, 4-ACRS-4C-23, 3-4372, 3-4376) M-43, "Authorization for Procedure and/or Administration of Anesthesia," M-65, "Consent for Gilliam Psychiatric Hospital Treatment," M-107, "Consent for Neuroleptic Medications," M-108, "Consent or Denial of Consent to Use Neuroleptic Medication in Patients with Tardive Dyskinesia," and M-111, "HIV Patient Education/Counseling Record." (Amended by Change 1 dated October 21, 2013.)

1.4 The informed consent for procedures will remain valid for 72 hours, provided that the inmate remains in agreement with the recommended intervention. The inmate may revoke his/her consent in writing to treatment at any time prior to the treatment. (NOTE: A new consent must be signed by the inmate if the procedure is postponed beyond the expiration time of the informed consent [i.e., beyond 72 hours].)

(NOTE: See Medical Directive 200-3, "Withholding or Withdrawing of Life Support," for cases involving removing an inmate from life support.)

1.5 Consent is assumed and medical care can be given when a patient presents, contacts, or reports to a health care giver to request care; or a patient has an emergency in which an average person would readily agree to reasonable treatment because of the severity of the injury.

## 2. DEFINITIONS:

Emancipated refers, for the purposes of this policy/procedure, to an individual who is exempt from laws governing consent for a minor.

Implied Consent refers to consent that is assumed when a patient presents, contacts, or reports to a health care giver to request care or has an emergency in which an average person would readily agree to reasonable treatment because of the severity of the injury.

Informed Consent refers to a documented process resulting in the patient agreeing to medical tests, or procedures or treatments, after the patient has been presented with and has had opportunity to discuss the nature and purpose of the proposed test or treatment, with its risks/benefits; reasonable alternate forms of care, if any, with their risks/benefits; and the risks/consequences of refusing the care or diagnostic tests.

Major Medical Treatment refers to a medical, surgical, or diagnostic intervention or procedure where a general anesthetic is used, or which involves significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation; or having a significant recovery period; or having a substantial risk factor involved.

Patient Unable to Consent refers to a patient who is unable to appreciate the nature and implications of his/her condition and proposed health care in order to make a reasonable decision concerning the proposed health care or who is unable to communicate that decision in an unambiguous manner.

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